

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

AGNESIAN HEALTHCARE, INC.,

Plaintiff,

vs.

CERNER CORPORATION,

Defendant.

Eastern District of Wisconsin

Case No. _____

Fond du Lac County Case No. 17-CV-331

DEFENDANT CERNER CORPORATION'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Cerner Corporation removes Plaintiff Agnesian Healthcare, Inc.'s lawsuit against Cerner, which Plaintiff filed in the Circuit Court of Fond du Lac County, Wisconsin. (Agnesian Healthcare, Inc. v. Cerner Corporation, Case No. 2017CV000331.) Complete diversity of citizenship exists under 28 U.S.C. § 1332 because Plaintiff Agnesian Healthcare Inc. ("Plaintiff") is a resident of the State of Wisconsin and Defendant is a resident of the States of Missouri and Delaware. Additionally, the amount in controversy exceeds the jurisdictional amount of \$75,000.00, exclusive of interest and costs.

In support of its Notice of Removal, Defendant states:

1. Plaintiff Agnesian Healthcare, Inc., is a "Wisconsin non-stock, non-profit corporation based in Fond du Lac, Wisconsin." Plaintiff filed its complaint against Defendant in the Circuit Court of Fond du Lac County on August 16, 2017. (Complaint, ¶ 7, attached as Exhibit 1.)¹ Plaintiff is a citizen of Wisconsin.

¹ Plaintiff has attached several contracts to its complaint as Exhibits A-D that include confidential terms and language as defined within the contracts as well as in Fed. R. Civ. P. 5.2 and 26(c)(1)(G). Pursuant to the terms of the agreements in the respective Exhibits, Plaintiff should have redacted the contracts to protect against disclosure of confidential or otherwise sensitive information. Defendant is concurrently filing a request to submit redacted versions of the exhibits to protect its confidential business and trade secret information. Exhibit 1 to the removal petition is in redacted form. The unredacted format of the Exhibits are attached to the concurrently filed Motion to Seal.

2. Cerner Corporation is a Delaware corporation with its principal place of business in Kansas City, Missouri. (Complaint, ¶ 8.) Defendant is a citizen of Delaware and Missouri. Defendant is not, and has never been, a citizen of Wisconsin.

3. Plaintiff alleges in its Complaint that it has purchased and used several of Defendant's software products since at least 2004. (Complaint, ¶ 11.) Plaintiff pleads that Defendant violated warranties in the parties' contract, and Plaintiff further contends Defendant intentionally and negligently defrauded Plaintiff. (Complaint, ¶¶ 47-69.)

4. Plaintiff alleges it has suffered "at least \$16 million" in damages and "continues to suffer damages of at least \$200,000 per month." (Complaint ¶¶ 44-45.) Plaintiff's allegations establish the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. 1446(c)(2).

5. Because the lawsuit is between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, the Court has original jurisdiction over the lawsuit under 28 U.S.C. § 1332. Defendant may remove the case to federal court in accordance with 28 U.S.C. § 1441(a).

6. Defendant has attached all process, pleadings, and orders served upon Defendant as Exhibit 1 in accordance with 28 U.S.C. § 1446(a). Defendant has also attached the State Court docket sheet as Exhibit 2.

7. Removal is timely under 28 U.S.C. § 1446(b). Plaintiff served Defendant with the Summons and Complaint on August 17, 2017. Defendant has therefore filed its Notice of Removal within 30 days of service.

8. Defendant will also file its Notice of Filing of Notice of Removal, along with a copy of the Notice of Removal, with the Clerk of the Circuit Court of Fond du Lac, Wisconsin.

Defendant will serve written notice of its filing the Notice of Filing Notice of Removal on Plaintiff's counsel in accordance with 28 U.S.C. § 1446(d).

9. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district includes the jurisdiction where Plaintiff filed its lawsuit, Fond du Lac County, Wisconsin.

10. No additional consent to this removal is required.

WHEREFORE, Defendant Cerner Corporation hereby gives notice that Case No. 17-CV-331 is removed from the Circuit Court of Fond du Lac, Wisconsin, to the United States District Court for the Eastern District of Wisconsin.

Dated this 15th day of September, 2017.

s/ Sarah E. Thomas Pagels

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been forwarded to all counsel of record, by U.S. Mail and electronic mail, on this 15th day of September, 2017, as follows:

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